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IN THE

Supreme Court of the United States

October Term, 1959

No. 395

P. T. HUFFMAN, Individually; and
P. T. HUFFMAN TRANSFER, INC.,
Petitioners,

v.

JAMES M. WILLARD,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

Thornton H. Brooks
L. P. McLendon, Jr.
440 W. Market St.
Greensboro, N. C.
Attorneys for Petitioners

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

Petitioners pray that a Writ of Certiorari issue to review the judgment of the Supreme Court of the State of North Carolina entered in the above cause on June 12, 1959, (Appendix B), sustaining a judgment of the Superior Court of Guilford County, State of North Carolina (R. pp. 26-27), and ordering a final judgment in favor of respondent.

OPINIONS BELOW

The decision of the Superior Court upon motion of the petitioners to dismiss for lack of jurisdiction (R. pp. 21-25), and upon verdict and judgment rendered after trial (R. pp. 26-27) are not reported. The opinion of the Supreme Court

of North Carolina (Appendix A) is reported in 250 N. C. 396, 109 S. E. 2d 233 (1959). The same case was first heard by the Supreme Court of North Carolina in 1957 and reported in 247 N. C. 523, 101 S. E. 2d 373 (1958) and was remanded to the trial court for new trial for errors assigned to the trial court's charge. The jurisdictional ground now before this Court in this petition was not passed upon by the Supreme Court of North Carolina in the first appeal, the Court observing that the matter could be raised in the trial court upon remand to that court.

JURISDICTION

The judgment of the Supreme Court of North Carolina sought to be reviewed was dated and entered June 12, 1959 (Appendix B). The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3). The Federal questions herein presented were raised in the Superior Court by petitioner's motion to dismiss for lack of jurisdiction (R.pp. 5-26). In connection therewith, the parties through counsel stipulated in substance that the orginal complaint alleging wrongful discharge of the respondent was filed with the National Labor Relations Board; that the Board refused to accept jurisdiction because the inter-state volume of trucking carried on by petitioner-company was less than $100,000.00 per year; that the charges filed by respondent-employee with the Board grew out of the same incident alleged in the subsequent state court action; that certain "commerce data" was filed by petitioner-company with the Board showing that the inter-state revenues of the petitioner constituted about 20 per cent of the total dollar volume of business of approximately $100,000.00 during the twelve months preceding the filing of the report. Petitioners tendered to the trial court findings of fact and conclusions of law in support of their motion which were refused (R.pp. 21-26). During the course of the retrial petitioners also excepted and assigned error to the failure of the trial court to dismiss for lack of jurisdiction and to dismiss as of nonsuit. (R.pp 80-81). All of these assignments of error specifically directed to the jurisdiction of the trial court were carried forward on

appeal (Assignments of Error Nos. 1-6 inclusive; Assignments of Error Nos. 8, 9, 10; R.pp. 80-81).

The jurisdiction of the trial court was fully argued in the briefs and orally before the Supreme Court by all parties.

The opinion of the Supreme Court of North Carolina holds that the North Carolina Right-to-Work Act (G. S. 95-78 to 81,) gives to the courts of North Carolina jurisdiction to hear and determine those cases involving alleged wrongful discharge for union activity in a business affecting commerce where it appears that the National Labor Relations Board has refused to exercise its jurisdiction. The opinion expressly holds that the remedy provided by the North Carolina Act is in the form of damages for tortious conduct and therefore not in conflict with the National Labor Relations Act, as amended.

QUESTION PRESENTED

Whether the Labor-Management Relations Act, 1947, precludes state courts from granting a judgment for damages arising out of alleged wrongful discharge of an employee for alleged union activity when it appears upon the record that the National Labor Relations Board, although having jurisdiction under the Act, refuses or declines to assert same.

STATUTES INVOLVED

The pertinent constitutional and statutory provisions involved are set forth in Appendix C hereto.

STATEMENT OF THE CASE

Respondent, a driver for the petitioner-trucking company, was discharged by petitioner trucking company through its president on 18 January 1956. On 19 January 1956, he filed a complaint with the National Labor Relations Board against the petitioner-company alleging violation of Section 158(a), subsection (1) and (3) of the National Labor Relations Act (R.pp. 15-16). From the

commerce data furnished by petitioner-company, the record clearly shows that it was engaged in activity affecting inter-state commerce, grossing some $20,000.00 per year from its inter-state and inter-line revenues. The jurisdictional criteria of the Board not being met (stipulation of counsel. R. p. 14), the Board refused to exercise its jurisdiction and dismissed the complaint. No appeal from this action was taken by the respondent.

Respondent promptly brought suit in the Superior Court of North Carolina under the North Carolina Right-to-Work Act for damages, i.e., lost wages. Jury trial resulted in a verdict for the respondent and an award of damages in the amount of $1,000.00 for wages allegedly lost by said employee.

The Supreme Court of North Carolina held that the North Carolina Right-to-Work Act gave the North Carolina Courts jurisdiction to hear and decide the action brought by the respondent-employee. It held that "it would seem to be clear that the corporate defendant's inter-line transportation . . . does affect inter-state commerce." (Appendix A). That Court went on to observe that the North Carolina Courts were seeking not to administer the provisions of Section 158(a), Subsection (1) and (3) of the Labor Relations Act, but to enforce provisions of the North Carolina Right to Work Act which "have no counterpart in the National Labor Relations Act." (Appendix A).

Finally, the North Carolina Supreme Court concluded that the judgment of the lower court should be affirmed "in view of what was said in *Local No.* 10, *A.F. of L. v. Graham*, 345 U. S. 192, 97 L. Ed. 946; *United Construction Workers, et al., v. Laburnum Construction Corporation*, 347 U. S. 656, 98 L. Ed. 1025; *International Asso. Machinists v. Gonzales*, 356 U.S. 617, 2 L. Ed. 2d 1018; and *International Union, U.A.A. & A.I.W. v. Russell*, 356 U. S. 634, 2 L. Ed. 2d 1030, relative to the right to recover damages for tortious conduct, irrespective of whether or not such conduct was an unfair labor practice. . . ." (Appendix A).

REASONS FOR GRANTING THE WRIT

This case presents a serious question of Federal law as to the scope and possible conflict of the Labor Management Relations Act, 1947, and state Right-to-Work Laws in regard to alleged unlawful discharge for union activity in businesses affecting inter-state commerce.

I. The Federal Question Was Decided in a Way Probably in Conflict with the Applicable Decisions of this Court.

By stipulation of counsel, the action brought by respondent is based upon the same incidents involved in the complaint first filed with the Board. In that complaint, respondent, if successful, would have been entitled to reinstatement and lost wages. This suit, subsequently filed in the Superior Court of Guilford County, North Carolina, sought to recover damages for lost wages. (R. pp. 2-3; pp. 77-79).

The decision of the Supreme Court of North Carolina in the instant case concerns the same issue and is controlled by the decision of this Court in *San Diego Building Trades Council v. Garmon*, —— U. S. ——, 3 L. Ed. 2d 775, (1959), wherein this Court reversed an award of the California Court for damages for injuries caused by a union's activities. Mr. Justice Frankfurter, speaking for the Court, observed:

> "When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by sec. 7 of the Taft-Hartley Act, or constitute an unfair labor practice under sec. 8, due regard for the federal enactment requires that state jurisdiction must yield. To leave the States free to regulate conduct so plainly within the central aim of federal regulation involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law. Nor has it mattered whether the States have acted through laws of broad general application rather than laws specifically directed

towards the governance of industrial relations. Regardless of the mode adopted, to allow the States to control conduct which is the subject of national regulation would create potential frustration of national purposes.

* * * *

". . . When an activity is arguably subject to sec. 7 or sec. 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted. Ibid.

* * * *

"Nor is it significant that California asserted its power to give damages rather than to enjoin what the Board may restrain though it could not compensate. Our concern is with delimiting areas of conduct which must be free from state regulation if national policy is to be left unhampered. Such regulation can be as effectively exerted through an award of damages as through some form of preventive relief. The obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy. . . ."

Petitioners invite the attention of the court to *DeVries, et. al v. Baumgartner's Electric Construction Co.*, —— U.S. ——, 3 L. ed. 2d 976 (1959) where this court in a *per curiam* opinion reversed a judgment of South Dakota court for damages awarded under Right-to-Work statute.

The North Carolina Supreme Court relied principally upon *United Construction Workers v. Laburnum, supra*, in support of its position that the lower court had jurisdiction by virtue of the nature of the action—"to recover damages for tortious conduct." Yet, as stated by Mr. Justice Frankfurter in *San Diego Building Trades Council*, supra, (L. Ed. p. 785):

> "But that decision [*Laburnum*] was determined, as is demonstrated by the question to which review was restricted, by the 'type of conduct' involved, i.e., 'intimidation and threats of violence.'"

In the concurring opinion, Mr. Justice Harlan, Mr. Justice Clark, Mr. Justice Whittaker and Mr. Justice Stewart, in *San Diego Building Trades Council, supra*, although questioning the basis of *Laburnum, supra*, as "premised on violence," state (L. Ed. p. 786):

> "The threshold question in every labor preemption case is whether the conduct with respect to which a State has sought to act is, or may fairly be regarded as, federally protected activity."

The failure of the Board to take Jurisdiction does not vary the fact that Congress has divested the States of jurisdiction in cases clearly covered by the National Labor Relations Act, as amended. *Hotel Employees Union v. Sax Enterprises, et al.* —— U. S. ——, 3 L. Ed. 2d 289, 79 S. Ct. ——, (1959); *Garner v. Teamsters, C & H Local Union*, 346 U.S. 485, 98 L. Ed. 228, 74 S. Ct. 161; *Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468, 99 L. Ed. 546, 75 S. Ct. 480; *Amalgamated Meat Cutters, etc. v. Fairlawn Meats, Inc.*, 353 U. S. 20, 1 L. Ed. 2d 613, 77 S. Ct. 604.

II. Importance of the Question Presented Which Has Not Been, But Should Be, Settled by this Court.

The foregoing question of Federal law is of vast and increasing importance in the field of labor relations, especially in the eighteen states which have Right-To-Work laws. The decisions of this Court have not yet considered the situation where an empoyee in an interstate activity seeks damages for alleged wrongful discharge. To leave the present uncertainty in this particular area would create a serious conflict between the National Labor Relations Board and the various state courts and labor agencies.

CONCLUSION

For the reasons stated, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Thornton H. Brooks
L. P. McLendon, Jr.

440 West Market Street
Greensboro, North Carolina

Attorneys for Petitioners